

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>  <b>FELIX ANTONIO OTERO</b>  <b>Debtor,</b>	§ § § § §	<b>CASE NO. 21-33905</b>  <b>Chapter 13</b>
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<b>FELIX ANTONIO OTERO</b>  <b>Plaintiff</b> <b>VS.</b>  <b>U.S. BANK TRUST NATIONAL ASSOCIATION</b>  <b>Defendant,</b>	§ § § § § § § §	<b>ADVERSARY NO.</b> _____
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**NOTICE OF REMOVAL**

Defendant US BANK TRUST NATIONAL ASSOCIATION AS TRUSTEE OF THE CABANA SERIES IV TRUST, improperly named as U.S. BANK, N.A. (“US BANK”) respectfully notifies the Court pursuant to 28 U.S.C. §§ 157, 1334 and 1452(a), In Re: Order of Reference to Bankruptcy Judges, General Order 2012-6 (S.D. Tex. May 24, 2012) and Rule 9027 of the Federal Rules of Bankruptcy Procedure that it has this day removed this action from the United States District for the Southern District of Texas, Houston Division. In support of such removal, Defendant states as follows:

**THE DISTRICT COURT ACTION AND FACTS SUPPORTING REMOVAL**

1. On or about October 4, 2021, Plaintiff filed his Plaintiff's Original Petition, Application for Injunctive Relief and Request for Disclosures (the “Petition”) in the 164<sup>th</sup> Judicial District Court of Harris County, Texas in Cause No. 2021-64265 and styled *Felix Otero v. U.S. Bank, N.A.* (the “State Court Action”) related to claims involving real property commonly known as 306 Plaza Del Sol Park, Houston, Texas 77020 (the “Property”) (improperly listed as

306 Plaza Sol Park, Houston, Texas 77020 in plaintiff's state court petition). Plaintiff identified the Property as his property to be included in the bankruptcy estate. The State Court Action was filed to stop US Bank's duly noticed foreclosure sale on the Property. Although Defendant was never served in the State Court Action, Defendant filed its Answer in state court on October 6, 2021 and on October 8, 2021, Defendant removed the State Court Action to the United States District Court of the Southern District of Texas, Houston Division, pursuant to the district court's diversity jurisdiction, wherein it was assigned Case No. 4:21-cv-03295 ("the Federal District Court Action").

2. Plaintiff filed his Title 11, Chapter 13 bankruptcy proceeding on December 6, 2021.<sup>1</sup> The allegations pending in the Federal District Court Action are related claims or matters under Title 11 and include related bankruptcy claims arising under 28 U.S.C. § 157, including but not limited to 28 U.S.C. §§ 157(b)(1) & (b)(2) (A) ("matters concerning the administration of the estate"); (C) ("counter claims by the estate against persons filing claims against the estate"); (G) ("motions to terminate, annual, or modify the automatic stay"); (H) ("proceedings to determine, avoid, or recover fraudulent conveyances"); (K) ("determinations of the validity, extend, or priority of liens") and (O) ("other proceedings affecting the liquidation of the assets of the estate or the adjustment of debtor-creditor or the equity security holder relationship...") and such claims are removable under 28 U.S.C. §§ 1334 and 1452(a).

3. This case is removable under 28 U.S. C. §§ 1334 & 1452(a) since the Federal District Court Action is a civil proceeding arising under Title 11 or arising in or related to cases under Title 11.

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<sup>1</sup> It is requested that the Court take judicial note of the Bankruptcy Docket for 21-33905, including the claims register, if any.

**PROCEDURAL REQUIREMENTS**

4. In compliance with the venue provisions of Fed. R. Bankr. P. 9027(a)(1), this Court, the United States Bankruptcy Court of the Southern District of Texas, is the court of the district and division within which the Federal District Court Action was pending at the time of this removal.

5. In compliance with S.D. Bankruptcy Local Rule 9027-2 this is a core proceeding. *See* 28 U.S.C.A. §§ 157(b)(2)(C), (K) & (O). *See* In Re: Order of Reference to Bankruptcy Judges, General Order 2012-6 (S.D. Tex. May 24, 2012). The Defendant, the party removing the Federal District Court Action, consent to the entry of final orders or judgment by the bankruptcy judge.

6. Plaintiff's State Court Action was filed on October 4, 2021 and removed to the Federal District Court on October 8, 2021. Defendant was never served in the State Court Action, but it filed its Answer in the State Court Action on October 6, 2021. Plaintiff filed his bankruptcy action on December 6, 2021. The State Court Action/Removal to Federal Court was commenced prior to the filing of the bankruptcy action. This notice of removal is timely pursuant to Federal Rule of Bankruptcy Procedure 9027(a)(2)(A) because the notice of removal is filed within 90 days after the order for relief.<sup>2</sup>

7. A copy of this Notice of Removal has been served on all parties to the removed action as required by Rule 9027(b) of the Federal Rule of Bankruptcy Procedure.

8. Pursuant to 28 U.S.C. § 1446(a) and Bankruptcy Court Local Rule 9027-1 this Notice of Removal is accompanied by copies of the following materials:

Exhibit "A"                      Adversary Cover Sheet

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<sup>2</sup> "The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter." 11 U.S.C. § 301(b).

<u>Exhibit “B”</u>	Index of matters being filed
<u>Exhibit “C”</u>	The federal district court docket sheet
<u>Exhibit “D”</u>	All papers filed in federal court
<u>Exhibit “E”</u>	A list of all counsel of record, including addresses, telephone numbers and parties represented

9. In Compliance with Fed. R. Bank. P. 9027(a)(1), promptly after filing this notice of removal the Defendant will file a copy of this Notice, excluding the exhibits, with the clerk of the federal district court from which the claim or cause of action is removed.

WHEREFORE, Defendant removes this action from the United States District Court of the Southern District of Texas to the United States Bankruptcy Court for the Southern District of Texas, Houston Division, so that this Federal Bankruptcy Court may assume jurisdiction over the case as provided by law.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

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**CERTIFICATE OF SERVICE**

I certify that on this the 16<sup>th</sup> day of December 2021, a true copy of the above document has been delivered in person to the following pursuant to the Federal Rules of Bankruptcy Procedure for each party listed below.

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CHAPTER 13 BANKRUPTCY CASE

**SERVED BY ELECTRONIC  
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By: /s/ Richard E. Anderson  
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